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IN THE

Supreme Court of the United States

October Term, 1950.

No. 223

STUDIO CARPENTERS LOCAL UNION No. 946, an unincorporated labor organization, as representative of its members,

Petitioner,

vs.

LOEW'S, INCORPORATED, a corporation; PARAMOUNT PICTURES, INC., a corporation; WARNER BROTHERS PICTURES, INC., a corporation; COLUMBIA PICTURES CORPORATION, a corporation; SAMUEL GOLDWYN PRODUCTIONS, INC., a corporation; REPUBLIC PRODUCTIONS, INC., a corporation; HAL E. ROACH STUDIO, INC., a corporation; TWENTIETH CENTURY FOX FILM CORPORATION, a corporation; R. K. O. RADIO PICTURES, INC., a corporation; UNIVERSAL PICTURES COMPANY, INC., a corporation; ASSOCIATION OF MOTION PICTURE PRODUCERS, INC., a corporation; THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA; RICHARD WALSH, and ROY M. BREWER,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals, for the Ninth Circuit.

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vs.

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Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals, for the Ninth Circuit.

Petitioner, as representative of its members, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, for the Ninth Circuit, entered in the above-entitled case on May 1, 1950.

Opinions Below.

The opinion of the District Court [R. 37], reported in 84 Fed. Supp. 675 is addressed to the original complaint for declaratory relief [R. 2], and not to the amended complaint in issue [R. 40]. The opinion of the United States Court of Appeals, for the Ninth Circuit [R. 116], is reported in 182 F. 2d (Adv.) 168.

Reference is made to the concurrent petitions in the *Schatte* and *MacKay* cases, 182 F. 2d 158 and 170.

Jurisdiction.

The judgment of the Court of Appeals was entered on May 1, 1950 [R. 121]. The jurisdiction of this Court is invoked under 28 U. S. C. 1251(1).

Question Presented.

Whether the United States District Court has jurisdiction of the parties without diversity of citizenship; and whether the amended complaint, filed by the plaintiff Union as representative of its members, and solely in their behalf, states a claim upon which relief can be granted; under the Constitution and laws of the United States.

Statutes Involved.

The pertinent statutory provisions are printed in Appendix A (App. pp. 1-6).

Statement.

The statement of the Court below is quoted, as follows:

FIRST COUNT: "The action was brought by appellant carpenters union as representative of its members, all of whom have been employed or were eligible for employment by the appellee companies. It is further alleged that I. A. T. S. E., appellee companies and the carpenters union had entered into certain bargaining agreements setting up procedures for handling grievances and establishing a closed shop; that the agreements gave to members of the carpenters union the exclusive right to perform all required carpenter work; that as a result of a conspiracy between I. A. T. S. E. and appellee companies, the members of the carpenters union were ordered to discontinue work and have been locked out, but that their employment has not been terminated; that appellee companies have refused and continue to refuse to bargain with appellant as the bargaining agent and have deprived the members of appellant union of the privilege to work granted by the contract.

"Appellant does not allege nor does it pray for damages to itself as a union. It asks damages for individual members because of the alleged breach of collective bargaining agreement" [R. 117].

SECOND COUNT: "The complaint in this case also alleges, in a 'second cause of action,' the same misrepresentations to the California Unemployment Commission as are contained in the complaint in said case No. 12,321, and the complaint in this case further alleges, in some detail, that appellees 'caused' the officers of the California agency to commit numerous errors in denying members of appellant union the

privilege of inspecting certain files, presenting certain evidence, etc., and to construe the law erroneous as not entitling appellant's members to unemployment benefits."

A supplemental statement is respectfully submitted in Appendix C (App. pp. 40-44).

Specification of Errors to Be Urged.

The Court of Appeals erred:

1. In holding that "the complaint in this case" does not state "a cause of action for relief in a United States District Court" [R. 118].

2. In holding that "Section 7 of the National Labor Relations Act, (29 U. S. C. A. 157)," as re-enacted in the Labor Management Relations Act, "does not give jurisdiction to the district court over a private suit for the acts alleged in the complaint because the exclusive remedies for those acts are contained in the National Labor Relation Act" [R. 119].

3. In holding that "Section 301 of the Taft-Hartley Act, (29 U. S. C. A. 185) is inapplicable because no breach of contract is alleged as occurring after its enactment" [R. 118].

4. In holding that "Section 303, (29 U. S. C. A. 187), is inapplicable because mere threats made by labor organizations to employers are not included in the acts prohibited by that section" [R. 118].

5. In holding that "the allegations with respect to the circumstances surrounding the denial of unemployment benefits to appellant's members" are insufficient "to state a claim for relief under the Social Security Act or Civil Rights Acts" [R. 119].

6. In holding that "3 U. S. C. A. 43 is inapplicable because appellees are not alleged to have acted under color of any state or territorial law, custom or usage" [R. 119].

7. In holding that "8 U. S. C. A. 47(3) is inapplicable because there is no allegation tending to show that appellant's members were hindered in any way from presenting their claims and contentions to the proper authorities and having those claims ruled upon in a proper, orderly manner" [R. 119].

8. In affirming the dismissal of said action [R. 121].

Reasons for Granting the Writ.

The reasons for granting the writ are based upon direct conflicts between the decision of the Court below in the instant case, and decisions of this Court, and of Courts of Appeals from other Circuits, upon questions that are of vital importance to great numbers of people, and to the public interest:

In the maintenance of constitutional administrative law and procedure;

In protecting bona fide collective bargaining under Section 7 of the National Labor Relations Act, as re-enacted in the Labor Management Relations Act, and good faith observance of contracts negotiated thereunder, free from conspiracy and fraud;

In protecting the purposes of the Social Security Act, and its vast coverage, and lawful administration and use of Social Security funds allocated to State Unemployment Agencies; and

In upholding the Civil Rights Act, in its application to cases where employers conspire to, and cause state

officials to violate the Constitution and laws of the United States, and of the State, under the color of said State laws, by applying them contrary to the decisions of the State Supreme Court;

In protecting employees from arbitrary and capricious denials of unemployment insurance compensation, and disability benefits, due them from said trust funds, accruing from federal Social Security taxes;

In protecting employees from the unlawful use of blacklists furnished by the conspiring employers, and from the denial of fair hearings on their claims, and the denial of an opportunity for fair hearings before an impartial tribunal, on their appeals from blacklist denials of their claims (App. pp. 43-44) all for the purpose of subjecting said employees to more onerous conditions of employment, for the profit and benefit of conspiring employers.

First: The decision of the Court below, holding that the allegations of the amended complaint are insufficient to show jurisdiction, or state a cause of action, under Section 7 of the NLRA, as re-enacted in the LMRA (29 U. S. C. A. 157) (Specifications 1, 2), disregards the intent and legal effect of the declaration of policy in Section 1 of the NLRA, as re-enacted in the LMRA, in Section 1(a) of the LMRA, and in said Section 7 (29 U. S. C. A. 141, 151, 157), as quoted in Appendix A (App. pp. 1-3); and

Is directly in conflict with the following decisions of this Court:

American Federation of Labor v. Watson, 327 U. S. 582 (66 S. Ct. 761, 90 L. Ed. 973), at 591, where the bill in equity dealt with "a conflict between the Florida law

and the National Labor Relations Act," and the right of collective bargaining thereunder, and where the Court held that "since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce.'" (Citing cases.) The opinion is more fully shown in Appendix B (App. p. 25).

Moore v. Illinois Central Railroad Company, 312 U. S. 630 (61 S. Ct. 754; 85 L. Ed. 1089), where it was held that the Court had jurisdiction of the "suit for damages against respondent railroad Company," for the violation of the terms of his collective contract, without requiring the petitioner Moore "to exhaust the administrative remedies granted him by the Railway Labor Act." The opinion is more fully shown in Appendix B (App. pp. 8).

It is also directly in conflict with the decision of the Court of Appeals for the Sixth Circuit in *Gatliff Coal Co. v. Cox* (6 Cir., 1945), 152 F. 2d 52, where the Court held that the plaintiffs there could maintain their action for the difference in the wages due them under their Wagner Act collective agreement, and the amount paid them, as is quoted in Appendix B (App. p. 10).

Second: The decision of the Court below, in holding that "Section 301 of the Taft-Hartley Act (29 U. S. C. A. 185), is inapplicable because no breach of contract is alleged as occurring after its enactment" [R. 118], is directly in conflict with the express allegations in the complaint showing that the conspiracy of respondents, and their acts in pursuance thereof, continued in violation of the collective contracts, to, through and since the enactment

of the Taft-Hartley Act, as is more fully shown in Appendix C (App. pp. 40, 42); and

Is directly in conflict with the decision of this Court in *United States v. Trans-Missouri Freight Association,* 166 U. S. 290 (17 S. Ct. 540, 41 L. Ed. 1007), which arose from a conspiracy originating prior to the enactment of the Sherman Act. The Court held, at page 341, that the continuing conspiracy, and acts thereunder, subsequent to the enactment of the Act, were governed thereby. The opinion is more fully shown in Appendix B (App. p. 13).

It is also directly in conflict with two recent decisions of the Sixth Circuit in:

NLRB v. Local 74, etc. (6 Cir., 1950), 181 F. 2d Adv. 126, which cites and follows the foregoing decision of this Court, and applies it to the Taft-Hartley Act, by holding at page 131, that "Inasmuch as the strike was a continuing one, the Labor Management Relations Act of 1947 is being given no retroactive effect when held applicable to the case at bar." The opinion is more fully shown in Appendix B (App. p. 14).

American Federation of Labor v. Western Union Telegraph Co. (6 Cir., 1950), 179 F. 2d 535, which was an appeal from an order of dismissal made by the District Court upon the ground that "the Court lacks jurisdiction of the subject matter" (p. 535). The opinion there recites that Mae Hart, an employee of long standing, in whose behalf the AFL sued, as the union here sues for its members, was, on April 30, 1946, illegally and improperly removed from the rolls of the appellee company as an employee and refused further employment or a Class A pension. The Court held that "we are of the opinion that

the complaint clearly states a cause of action of which the United States District Court has jurisdiction" (p. 538). The opinion is more fully quoted in Appendix B (App. p. 16).

Third: The decision of the Court below, in holding "that the complaint in this case" does not state "a cause of action for relief in a United States district court" under "Section 301 of the Taft-Hartley Act (29 U. S. C. A. 185)" (Specifications 1, 3), disregards the text of Section 301(a) (Appendix A) (App. p. 3). Subsection (a) authorizes suits for violation of collective contracts where the *contracts* "are between an employer and a labor organization representing employees in an industry affecting commerce" or "between any such labor organization," that is, between the employees, as the principal party, and the employer, etc. Subsection (b) authorizes "any such labor organization" to sue "in behalf of the employees whom it represents in the Courts of the United States."

The text of Section 301(a) and (b) (29 U. S. C. A. 185), as set forth in Appendix A (App. p. 3). Subsection (a) authorizes suits for violation of collective contracts where the contracts "are between an employer and a labor organization representing employees in an industry affecting commerce" or "between any such labor organizations," that is, between the employees, as the principal party, and the employer, etc. Subsection (b) authorizes "any such labor organization" to sue "in behalf of the employees whom it represents in the Courts of the United States."

Yazoo M. V. R. Co. v. Webb (5 Cir., 1933), 64 F. 2d 902, at 903, is quoted in Appendix B (App. p. 7).

It holds, among other things, that a collective agreement "is a mutual general offer," by management and the union bargaining agent, "to be closed by specific acceptances" by employees; and that "when the agreement is published by the managers it becomes until abrogated the rule of that industry and any individual who thereafter continues in its employment or takes new employment takes it on the terms thereby fixed"; and that *"thus a worker cannot be discharged for causes prohibited by the agreement* or without a hearing if that is provided, *and the agreed seniorities must be observed in promoting, laying off, or re-employing men."* (Italics added.)

Gatliff Coal Co. v. Cox (6 Cir., 1944), 142 F. 2d 876, follows said *Yazoo* decision, and at 880 upholds an employee's right of action for the wages due him under and by the collective agreements. The opinion is more fully quoted in Appendix B (App. p. 9).

Gatliff Coal Co. v. Cox (6 Cir., 1945), 152 F. 2d 52, in an action arising under the Wagner Act, at page 55, upholds the employee's right of action for the wages provided in the collective agreement, the balance due over and above the amount that had been paid and received. The opinion is more fully quoted in Appendix B (App. p. 10).

Wilson & Co., Inc. v. United Packing House Workers (1949), 83 Fed. Supp. 162, was an action for breach of collective bargaining contracts, where jurisdiction was "invoked under Section 301(a)" of said LMRA, and under 28 U. S. C. A. 1337. The right of action and jurisdiction was upheld, as is set forth in Appendix B (App. p. 37).

United Steel Workers of America, et al. v. Shakespeare Co., et al. (1949), 84 Fed. Supp. 267, was an action by the Steel Workers Union, and others, identified in the opinion as members, for a judgment to determine the rights of the parties under a collective bargaining agreement. The motion to dismiss the case was denied (pp. 267, 272). Quotations from the opinion are given in Appendix B (App. p. 34).

American Federation of Labor v. Western Union Telegraph Co. (6 Cir., 1950), 179 F. 2d 535 (*supra,* was brought by the AFL, for one of its members. The decision there upheld the jurisdiction of the Court under Section 301. The opinion is more fully quoted in Appendix B (App. p. 16).

The decision is also directly in conflict with the following well-considered district court opinions:

United Electrical, R & M. Workers v. Baldwin, (D. C. Conn. 1946) 67 F. S. 235, at 239, holding that: "(4) The individual plaintiffs as citizens of the United States are proper parties. The plaintiff unions, voluntary associations of individuals, are also proper parties to conduct the suit in a representative capacity in the interest of their members." The opinion is more fully quoted in Appendix B (App. p. 36).

Fourth: The decision of the Court below, in holding "that the complaint in this case" does not state "a cause of action for relief in a United States district court" under "Section 303 (29 U. S. C. A. 187)," and that said Section "is inapplicable because mere threats made by labor organizations to employers are not included in the acts prohibited by that section" (Specifications 1, 4), disregards the text of subsection (a) thereof making the

acts alleged herein unlawful, and of subsection (b) thereof giving "whoever shall be injured in his business or property by reason" thereof, a right to "sue in any district court of the United States"; and

Is directly in conflict with the following decisions of this Court:

Duplex Printing Press Co. v. Deering (1921), 254 U. S. 443 (41 S. Ct. 172; 63 L. Ed. 349), at 473 where the Court held that threats of boycott by a labor organization when made to compel employers to yield, were unlawful.

Allen Bradley Co. v. Local Union No. 3 International Brotherhood of Electrical Workers (1945), 325 U. S. 797 (65 S. Ct. 1533; 89 L. Ed. 1939), at 808 where the Court held that "the union's contribution to the trade boycott was accomplished through threats." The opinion is more fully set out in Appendix B (App. p. 24).

Fifth: The decision of the Court below, in holding that "the allegations with respect to the circumstances surrounding the denial of unemployment benefits to appellant's members" are insufficient "to state a claim for relief under the Social Security Act or Civil Rights Acts" (Specifications 1, 5, 6, 7), disregards the text of said Acts as given in Appendix A (App. pp. 3-5), and the intent and meaning of the complaint as shown in Appendix C (App. pp. 42-44); and

Is in direct conflict with the decision of this Court in *Screws v. United States,* 325 U. S. 91 (65 S. Ct. 1040; 89 L. Ed. 1495, 162 A. L. R. 1330), at page 111, where the Court held that "under 'color' of law means under 'pretense of law' ", and that "acts of officers who under-

take to perform their official duties are included whether they hew to the line of their authority or overstep it. If, as suggested, the statute was designed to embrace only action which the state in fact authorized, the words 'under color of any law' were hardly apt words to express the idea." The opinion is more fully set out under Appendix B (App. p. 33).

Sixth: The decision of the Court below, in holding that "8 U. S. C. A. 43 is inapplicable because appellees are not alleged to have acted under color of any state or territorial law, custom or usage" (Specification 6), disregards the allegations of the complaint, as shown in Appendix C (App. p. 43), and particularly in the agreement made between the employer respondents on September 16, 1946, (R. 52; Appendix C, p. 43), a week before they ordered petitioner's members to leave their premises, by which they conspired to disqualify petitioner's members for unemployment compensation under the disqualification provisions of Section 56(a) of the California Unemployment Insurance Act (Appendix A, App. p. 6). Reference is made to the Appendix C statement of the Second Count (App. pp. 42-44) show just how petitioner's members were deprived of their rights under the Social Security Act, and just how the employer respondents, in pursuance of their conspiracy, caused this to be done by the State officials under color of said Section 56(a).

The actions of the State officials, and the interpretation they gave Section 56(a), were directly in conflict with the following decisions of the Supreme Court of California:

Bodinson Mfg. Co. v. California Employment Commission (1941), 17 Cal. 2d 321, held that "an employee who

is prevented from working through no act of his own is entitled to compensation as, for example, where he is barred by force from the premises where he has been working" (p. 327), and that "Fairly interpreted, it was intended to disqualify those workers who voluntarily leave their work because of a trade dispute" (p. 328).

Bunny's Waffle Shop v. California Employment Commission (1944), 24 Cal. 2d 735, held that "If the other employers thereupon choose to close their establishments and lock out their employees, such employees cannot be charged with leaving their work because of a trade dispute" (p. 741).

McKinley v. California Emp. etc. Com. (1949), 34 Cal. 2d 239, held, at 243, that "accordingly, the right to benefits under Section 56 of the statute was said to depend upon whether the worker left his job of his own free will or was forced to do so because of the acts of others," and, at 245, "If the other employers thereupon choose to close their establishments and lock out their employees, such employees cannot be charged with leaving their work because of a trade dispute."

Mark Hopkins, Inc. v. Cal. Emp. Com. (1944), 24 Cal. 2d 744, at 748, under the color of which the employer defendants fraudulently caused the State Unemployment Authorities to attempt to coerce plaintiff's members, shows by its own language that the attempted "purge" requirement had no application to plaintiff's members. The opinion states:

> "* * * A claimant is thus ineligible for benefits if the trade dispute is the direct cause of his continuing out of work. If a claimant who leaves his work because of a trade dispute subsequently obtains a permanent fulltime job, however, he is no longer

out of work and the continuity of his unemployment is broken. If he loses his new job for reasons unrelated to the dispute, he is unemployed by reason, not of the trade dispute, but of the loss of the new employment. * * *"

Seventh: The decision of the Court below, in holding that "8 U. S. C. A. Sec. 47(3) is inapplicable because there is no allegation tending to show that appellant's members were hindered in any way from presenting their claims and contentions to the proper authorities and have those claims ruled upon in a proper, orderly manner" (Specification 6), disregards the allegations of the complaint that the defendants conspired to, and did, cause the State Unemployment authorities to deny plaintiff's members a fair hearing, to deny their claims from a blacklist, and to deny them an opportunity for a fair hearing, before an impartial tribunal upon their appeals [R. 54-61; Appendix C, pp. 42-44); and

Is directly in conflict with both the majority and minority opinions in the decision of said Ninth Circuit, in *Hugh Hardyman, et al. v. Orville Collins, et al.*, No. 12120 (May, 1950), ... F. 2d (Adv.) ..... The majority opinion therein holds that the Civil Rights Act, in said Section 47(3) "authorizes a civil suit for damages against private individuals for interfering, pursuant to a conspiracy, with an assemblage of citizens to discuss United States foreign policy and to petition the national government for redress of grievances." The minority opinion cites and follows:

Love v. Chandler et al. (8 Cir., 1942), 124 F. 2d 785, which held that the State of Minnesota had not discriminated against the appellant there, within the meaning of

the law, because he had no absolute right "to have or retain employment by the Works Progress Administration," which distinguishes the *Love* case from the instant case, because petitioner's members do have a right under law to the unemployment compensation and disability benefits of which they have been deprived. The *Hardyman* and *Love* decisions are more fully stated in Appendix B (App. p. 28).

Eighth: The decision of the Court below, holding that "the complaint in this case" does not state "a cause of action for relief in a United States district court" under 8 U. S. C. A. 47(3) "because there is no allegation tending to show that appellant's members were hindered" before the State Unemployment authorities and that "any errors of law which were committed in the course of those proceedings are not subject to review in a suit under Section 47(3), disregards the allegations in the complaint that the claims of plaintiff's members were denied from a blacklist furnished by the conspiring employer respondents [R. 53], that petitioner's members were denied fair hearings [R. 53], an "opportunity for a fair hearing, before an impartial tribunal" as required by Section 303 of the Social Security Act (42 U. S. C. A. 503) [R. 53, 53-61], as is more fully shown in Appendix C (App. p. 44), and as the pertinent sections of the Social Security Act are set forth in Appendix A (App. pp. 3-5). This decision of the lower court:

Is directly in conflict with the decision of this Court in *Ohio Bell Telephone Company v. Public Utilities of Ohio,* 301 U. S. 292 (67 S. Ct. 724, 81 L. Ed. 1093), at 304, holding that State Agencies must give fair and open hearings as "one of 'the rudiments of fair play' assured

to every litigant by the Fourteenth Amendment as a minimal requirement." The decision is quoted more fully in Appendix B (App. p. 32).

The Companion Cases.

The Court below refers to the companion case of *Schatte v. I. A. T. S. E.*, No. 12,321, 182 F. 2d Adv. 158, and bases its decision in part thereon [R. 118]. Reference is also respectfully made to the companion case of *MacKay v. Loew's, Incorporated,* and to the concurrent petitions for certiorari in both of them.

Conclusion.

For the foregoing reasons, it is submitted, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ZACH LAMAR COBB,
Counsel for Petitioner.

July 24, 1950.

APPENDIX A.

Laws of the United States.

National Labor Relations Act.

Section 1 (29 U. S. C. A. 151): * * *

"It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purposes of negotiating the terms and conditions of their employment or other mutual aid or protection."

Section 7 (29 U. S. C. A. 157): "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, for the purpose of certed activities, for the purpose of collective bargaining or other mutual aid or protection."

Labor-Management Relations Act.

Section 1(b) (29 U. S. C. A. Supp. 141(b)): "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organi-

zations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Section 7 (29 U. S. C. A. Supp. 157): "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 101 (29 U. S. C. A. Supp. 151); re-enacting the provision of Section 1 in the NLRA, with an addition not material here.

Section 301(a) (29 U. S. C. A. Supp. 185(a)): "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Social Security Act.

Section 301, 42 U. S. C. A. 501. Appropriation.

"For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated * * *."

Section 302, 42 U. S. C. A. 502. Payments to States; computation of amounts.

"(a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under sections 1600-1611 of Title 26, such amounts as the Board determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. * * *"

"(b) Out of the sum appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification

under subsection (a), pay, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified. * * *"

Section 303, 42 U. S. C. A. 503, upon State laws, provisions required; stopped payments on failure to comply with law.

"(a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under sections 1600-1611 of Title 26, includes provision for—"

"(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and"

"(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

"(1) A denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

"(2) A failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to

comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State."

Section 405(a), 26 U. S. C. A. 1603(a)(5):

"Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;"

26 U. S. C. A. 1603. Approval of State laws:

"(a) Requirement. The Federal Security Administrator shall approve any State law submitted to him, within thirty days of such submission, which he finds provides that—"

"(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b): Provided, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;"

California Unemployment Insurance Act.

California Unemployment Insurance Act 8780d, 3 Deering's California General Laws, Section 56(a), page 3358:

"Sec. 56. Conditions precluding eligibility for benefits.

"An individual is not eligible for benefits for unemployment, and no such benefit shall be payable to him under any of the following conditions:

"(a) If he left his work because of a trade dispute and for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

California Administrative Code, Title 22, Social Security, Department of Employment.

"264. (Regulation.) Trade Dispute Disqualification. An individual who is disqualified from receiving unemployment compensation benefits under Section 56 of the Act is also disqualified from receiving disability benefits for the period during which, had he not become disabled, he would have continued to be disqualified under Section 56 of the Act."

APPENDIX B.

Yazoo & M. V. R. Co. v. Webb (5 Cir., 1933), 64 F. 2d 902, at 903:

"(2-5) An agreement upon wages and working conditions between the managers of an industry and its employees, whether made in an atmosphere of peace or under the stress of strike or lockout resembles in many ways a treaty. As a safeguard of social peace it ought to be construed not narrowly and technically but broadly and so as to accomplish its evident aims and ought on both sides to be kept faithfully and without subterfuge. In no other way can confidence and industrial harmony be sustained. But in itself it can rarely be a subject of court action because it is incomplete. It establishes no concrete contract between the employer and any employee. No one is bound thereby to serve, and the employer is not bound to hire any particular person. It is only an agreement as to the terms on which contracts of employment may be satisfactorily made and carried out. *It is a mutual general offer to be closed by specific acceptances.* When negotiated by representatives of an organization it is called collective bargaining, but ordinarily the laws of the organization, which constitute the authority of the representatives to act, do not require the individual members to serve under it, but only that *if they serve they will do so under its terms and will join in maintaining them as applied to others. When the agreement is published by the managers, it becomes until abrogated the rule of that industry and any individual who thereafter continues in its employment or takes new employment takes it on the terms thereby fixed. Ordinarily,* as in this case, there is no period fixed for the hirings and they are at the will of the parties, the employer

having the right to discharge at any time and the employee having the right to quit. *But the employment* though indefinite as to time is a relationship while it lasts, and *is subject to the conditions fixed in the working agreement for the industry. Thus a worker cannot be discharged for causes prohibited by the agreement or without a hearing if that is provided, and the agreed seniorities must be observed in promoting, laying off, or re-employing men.*" (Italics added.)

Moore v. Illinois Central Railroad Company, 312 U. S. 630 (61 S. Ct. 754, 85 L. Ed. 1089), at 632:

"Petitioner Moore, a member of the Brotherhood of Railroad Trainmen, brought suit for damages against respondent railroad company in a Mississippi state court, claiming that he had been wrongfully discharged contrary to the terms of a contract between the Trainmen and the railroad, a copy of the contract being attached to the complaint as an exhibit. Petitioner alleged that as a member of the Trainmen he was entitled to all the benefits of the contract. Judgment on the pleadings was rendered against Moore by the trial court. Upon appeal the Mississippi Supreme Court reversed and remanded."

And at 634:

"But respondent says that there is another reason why the judgment in its favor should be sustained. This reason, according to respondent, is that both the District Court and the Circuit Court of Appeals erred in failing to hold that Moore's suit was prematurely brought because of his failure to exhaust the administrative remedies granted him by the Railway Labor Act. * * * But we find nothing in that Act which purports to take away from

the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court."

And at 636:

"The District Court and the Circuit Court of Appeals properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prerequisite to suit for wrongful discharge."

Gatliff Coal Co. v. Cox (6 Cir., 1944), 142 F. 2d 876, at 879:

"Appellant alleged in paragraph 1 of its answer that the court was without jurisdiction of the subject matter of appellee's cause because appellee had no justiciable rights under the bargaining agreement between the coal operators' association and the labor organization * * *"

And at 880:

"* * * It is a mutual, general offer to be closed by acceptance. When the collective agreement is signed by the individual members of the employers' association and the collective bargaining agent of the labor organization, no other contract being shown, it becomes, until abrogated, the rule of the individual employer and any person who thereafter continues in the employment of the employer or takes new employment with him becomes entitled to all benefits of the collective agreement and incurs all of its obligations." (Citing cases.)

Since appellee was employed by appellant at the time the collective agreement was entered into between the Southern Appalachian Coal Operators' Association and District No. 19, United Mine Workers of America and he thereafter continued in the employ of appellant and

there being no showing that he made any individual contract conflicting with the collective agreement, appellee's rights arising out of his employment by appellant and the wages due him, if any, must be measured by the collective agreement. Appellee had the right under the circumstances here appearing to maintain the present action.

Gatliff Coal Co. v. Cox (6 Cir., 1945), 152 F. 2d 52, adopts the decision of the District Court, and at 52:

"These actions involve common questions of law and similar issues of fact. By agreement of the parties, for the purpose of trial, these were consolidated and tried by the Court without the intervention of a jury."

And at 53:

"* * * The plaintiffs were employed by defendant in operating its power house which furnished the power for the operation of all the mines, plaintiff Maynard Cox being an engineer and Ora L. Jones a fireman. Cox's employment covered the period from April 1, 1941, to and including March 31, 1943, and Jones worked from April 1, 1941, to and including June 30, 1942.

"Prior to April 1941, the defendant's employees were unorganized and defendant's mines were operated under a non-union open shop policy. During early April 1941 the employees were organized and plaintiffs, along with other employees, became members of the miners' union known as District 19, United Mine Workers of America, which will be hereinafter referred to as the Union. * * *"

"The participants in the wage conference at Washington, recognizing the fact that negotiations as to the new collective agreement would be prolonged, and desiring to promote the National defense program by ending the pend-

ing strike, on April 30, 1941, entered into a temporary agreement to be effective during the negotiations and until final conclusion of a new agreement. * * *"

And at 55:

"According to a transcript from defendant's books filed in the record which, pursuant to an order made at pre-trial conference, is accepted by the parties as correct, at the hourly rate for regular time and overtime as provided in the District Agreement, the plaintiff Maynard Cox earned a total of $4285.35 for regular time and a total of $5862.17 for overtime, for which defendant paid him only $1597.43 on account of regular time and $2181.63 on account of overtime.

"According to the same records, at the hourly rate for regular time and overtime, as provided in the District Agreement, the plaintiff Ora L. Jones earned a total of $2245.34 for regular time and a total of $2389.39 for overtime, for which defendant paid him only $1058.89 on account of regular time and $1105.33 on account of overtime.

"The payments so made to the plaintiffs, while substantially below the rates provided by the District Agreement, were more than the minimum rates required by Section 6 of the Fair Labor Standards Act (29 U. S. C. A. sec. 206) for regular time and included one and one-half thereof for overtime.

"The plaintiffs seek judgment for the balances due them, respectively, under the terms of the District Agreement * * *"

And at page 56:

"(1) During the period involved in this litigation, the rights and duties of the parties as employer and employees

were subject to the provisions of the 'National Labor Relations Act' (29 U. S. C. A. Secs. 151-166) * * * and in so far as these Acts of Congress are pertinent to the issues here involved they are controlling.

"The so-called 'District Agreement' was a valid collective bargaining agreement within the meaning of the National Labor Relations Act and is entitled to the protection which it affords.

"(2) *In utilizing collective bargaining agreements* to implement a National labor policy designed to remove certain recognized sources of industrial strife by encouraging friendly adjustment of industrial disputes as to wages, hours of work and other conditions of employment, upon a plane of equality of bargaining power between employers and employees, *the National Labor Relations Act, in the public interest, has given such collective bargaining agreements a more secure and stable position in our National economy than that of ordinary common law contracts* which may be altered at pleasure *by rendering ineffectual* and unavailable *any collateral agreements* between individual members of the collective bargaining group *designed to obtain a diminution of the obligations* of a particular employer *or abridgment of the benefits accruing to* particular *employees under the collective agreement,* regardless of the circumstances that may be relied upon to justify them or the terms there. *To hold otherwise '* * * would reduce the National Labor Relations Act to a mere futility and leave collective agreements no stronger than the weakest members of the union.'* J. I. Case Co. v. National Labor Relations Board, 321 U. S. 332, 64 S. Ct. 576, 88 L. Ed. 762. Statutes requiring collective bargaining would have little substance if what was made collectively could be promptly unmade individually. Order of

Railroad Telegraphers v. Railway Express Agency, Inc., 321 U. S. 342, 346, 64 S. Ct. 582, 88 L. Ed. 788. (Italics added.)

"(3) The Act also contemplates that a collective bargaining agreement be in writing. * * *"

"(4) It thus appears that the National Labor Relations Act clearly precludes defendant's reliance upon the prior or contemporaneous oral agreement upon which its defense to these actions is based.

"(5) *I am of the opinion that the wages, hours of work and conditions of employment of both plaintiffs,* during the period of their respective employments by defendant here involved, *were governed by the written collective bargaining agreements,* which defendant signed, *and that* by accepting semi-monthly payments of less amount than the wages provided by the written collective agreement, *they* are not estopped to claim the balance due them thereunder, but *are entitled to judgment for such balance.*" (Italics added.)

United States v. Trans-Missouri Freight Association, 166 U. S. 290 (17 S. Ct. 540, 51 L. Ed. 1007), at the pages indicated:

"On the 2d of July, 1890, an act was passed by the Congress of the United States, entitled 'An Act To Protect Trade and Commerce against Unlawful Restraints and Monopolies.'" (p. 291.)

"On the 15th day of March, 1889, all but three of the defendants, the railway companies named in the bill, made and entered into an agreement by which they formed themselves into an association to be known as the 'Trans-Missouri Freight Association,' and they agreed to be

governed by the provisions contained in the articles of agreement." (p. 292.)

"It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect; that the contract that the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it has been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act. There is nothing of an *ex post facto* character about the act. The civil remedy by injunction and the liability to punishment under the criminal provision of the act are entirely distinct, and there can be no question of any act being regarded as a violation of the statute which occurred before it was passed. After its passage, if the law be violated, the parties violating it may render themselves liable to be punished criminally; but not otherwise." (p. 342.)

National Labor Relations Board v. Local 74 Etc. (6 Cir., 1950), 181 F. 2d (Adv.) 126, at 127:

"The National Labor Relations Board seeks enforcement of its order directing Local 74, United Brotherhood of Carpenters and Joiners of America, A. F. of L., and its

business agent, Jack Henderson, to 'cease and desist from engaging in or inducing the members of Local 24 to engage in a strike or a concerted refusal in the course of their employment to perform services for any employer, where an object thereof is to require any employer or other person to cease doing business with Ira A. Watson, doing business as Watson's Specialty Store.'

"The authority for issuance of the Board's order is rested upon the following provisions of section 8(b) (4) (A) of the Labor Management Relations Act of 1947, * * *"

And at 131:

"(5) The respondents contend that their decision taken during working hours on August 21 to discontinue work at Stanley's residence in accordance with the working rules and practices of the union was a concerted decision not to return to work the next day, and that therefore, inasmuch as section 8(b) (4) (A) did not become effective until the following day (August 22), the section has no application and the Board lacked jurisdiction to enter the order which it did. Much reliance is placed upon the decision of United States District Judge Darr, who, in denying a temporary injunction sought by a regional director of the National Labor Relations Board to restrain the respondent union from maintaining a secondary boycott against the Ira A. Watson Company, said that in his judgment 'the whole employment relationship ceased to exist on August 21, 1947, and that when the Act became effective there was no unlawful situation'; and that the whole incident was closed."

And at 131:

"Inasmuch as the strike was a continuing one, the Labor Management Relations Act of 1947 is being given no retroactive effect when held applicable to the case at bar. In Jefferey-De Witt Insulator Co. v. National Labor Relations Board, 4 Cir., 91 F. 2d 134, 112 A. L. R. 948, certiorari denied 302 U. S. 731, 58 S. Ct. 55, 82 L. Ed. 565, it was held that the mere fact that a labor dispute began before the enactment of the National Labor Relations Act does not have the effect of withdrawing either the parties or the dispute from the regulatory power of Congress as to subsequently occurring acts. As early as 1897, the Supreme Court applied the same principle in holding that an agreement to establish and maintain future rates for transportation, though lawful when made, constituted a violation of the Sherman Anti-Trust Act, 15 U. S. C. A. Sec. 1 *et seq.*, when continued in operation after certain provisions of the agreement became unlawful in consequence of the Sherman Act. United States v. Trans-Missouri Freight Association, 166 U. S. 290, 17 S. Ct. 540, 41 L. Ed. 1007." (Italics added.)

American Federation of Labor v. Western Union Telegraph Co. (6 Cir., 1950), 179 F. 2d 535:

"Action by American Federation of Labor against the Western Union Telegraph Co. for alleged breach of collective bargaining agreement for a declaratory judgment.

"The United States District Court for the Northern District of Ohio, Eastern Division, Paul Jones, J., dismissed the action for want of jurisdiction and the plaintiff appealed.

"The Court of Appeals, Martin, Circuit Judge, held that the complaint stated a cause of action under both the Labor Management Relations Act and the Federal Declaratory Judgment Act."

And at 536:

"At the outset, it should be observed that jurisdiction is not rested upon diversity of citizenship. In its first numbered paragraph, the complaint asserts that jurisdiction of the United States District Court is based on section 301 of the Labor Management Relations Act, 1947, * * *"

"(1) It is well settled that a motion to dismiss for failure to state a claim should not be granted, unless it appears certain that the plaintiff would not be entitled to relief under any set of facts proved in support of his claim as stated. * * *

"The complaint alleges that appellant and appellee entered into two collective bargaining agreements in writing, effective respectively as of April 1, 1946, and April 1, 1947. Both agreements, in material part annexed as exhibits to the complaint, fix the terms and conditions of employment of all employees of appellee within the bargaining unit, including employees in the Cleveland office. The Agreement of April 1, 1947, has by mutual agreement been amended from time to time in certain respects not germane to this proceeding. *In both collective bargaining agreements, it is expressly provided that, during the life of the agreement, the Western Union Telegraph Company will not abandon or modify its existing Benefit and Pension Plan, except pursuant to mutual agreement.* * * *"

And at 537:

"The complaint charges that despite the fact that Mae Hart was fifty-five years, five months and fourteen days of age, with a service record in the employ of Western Union of twenty-one years and eleven and one-half months, and so qualified for a Class A pension under the provisions of the Benefit and Pension Plan, she was on April 30, 1946, illegally and improperly removed from the rolls of the appellee company as an employee and refused further employment for a class A pension. It is alleged that Mae Hart is ill, destitute and dependent upon charity and contributions from friends and relatives for the necessities of life, because of the illegal and improper refusal of appellee to pay the pension to which she is entitled; and that she has sustained both mental and physical suffering as the result of the illegal refusal of the appellee to comply with its contractual obligations to her and to the American Federation of Labor.

"The complaint asserts that Western Union denies that it has violated its contract or the provisions of the pension plan, that it claims justification in refusing to pay Mae Hart a Class A pension on the grounds that she was not on the active rolls of the company on April 30, 1946, when her Class D or sickness disability pension expired and that, in any event, the Pension Committee had uncontrolled discretion to refuse her or any other employee a pension on any grounds whatsoever. * * *"

And at 537:

"The prayer of the complaint is that the court entertain the action and enter judgment declaring that Mae Hart is entitled to a Class A pension effective May 1, 1946, making her whole for injuries suffered because of

the illegal actions of the defendant; that the court permanently enjoin the defendant from 'in any manner breaching and violating the provisions of said pension plan insofar as it affects Mae Hart or any other employee represented by the plaintiff'; and that the court grant such other and further relief as it deems just.

"(2) We are of opinion that the complaint clearly states a cause of action of which the United States District Court has jurisdiction. The action is one for violation of contract between appellant and appellee within the express provisions of section 301(a) of the Labor Management Relations Act of 1947; * * *"

Hugh Hardyman, et al., v. Orville Collins, et al. (9th Cir.), No. 12120, decided May 29, 1950, ... F. 2d .....:

"The trial court entered a judgment of dismissal of an amended complaint on the ground that it did not state a cause of action for damages under §47(3) of Title 8, U. S. C. A. * * *"

"In short, the question presented is whether §47(3) authorizes a civil suit for damages against private individuals for interfering, pursuant to a conspiracy, with an assemblage of citizens to discuss United States foreign policy and to petition the national government for redress of grievances. This broad question embraces three issues: 1. Did Congress intend to create such a civil action by the enactment of §47(3)? 2. If so, did Congress have constitutional power to do so? 3. Granted the constitutional power, is the statute a proper exercise thereof? We deal with the questions in the order named."

"The District Court concluded that the statute was intended to give a remedy for deprivation of rights only by

persons acting under color of state law. We think it embraces the deprivation of federal rights by private individuals and that such is the interpretation given the statute by the Supreme Court of the United States.

"We conclude that Congress has the constitutional power to protect against invasion of federal rights by private individuals. Congress has exercised that power by enacting §47(3). The allegations of the complaint are sufficient to invoke the provisions of said section.

"There exists an understandable reluctance to open the doors of federal courts for the redress of grievances inflicted by one set of individuals upon another lest those courts be flooded with actions that should properly be left to the states. We do not think the narrow compass of federally protected rights set up in §47(3) will permit of such a result. If it does, and the load becomes too burdensome, it then becomes a matter with which the congress must deal.

"Judgment of dismissal reversed."

Bodinson Mfg. Co. v. California Employment Commission, 17 Cal. 2d 321, at pages indicated (italics ours):

"* * * It is true that under the proper construction of the statute an employee who is prevented from working through no act of his own is entitled to compensation as, for example, where he is barred by force from the premises where he has been working. * * *" (p. 327)

"In brief, disqualification under the act depends upon the fact of voluntary action, and not the motives which led to it. The legislature did not seek to interfere with union principles or practices. The act merely sets up certain conditions as a prerequisite to the right to receive

compensation, and declares that in certain situations the worker shall be ineligible to receive compensation. *Fairly interpreted, it was intended to disqualify those workers who voluntarily leave their work because of a trade dispute* * * *" (p. 328)

Bunny's Waffle Shop v. California Employment Commission, 24 Cal. 2d 735, at 739 (italics ours):

"(1) *The commission's decision apparently is based upon the conclusion that the leaving of work was not voluntary, but it also found that the leaving was attributable to the employers' changes in wages and conditions of work,* to continue in effect until the unions would negotiate with them. *Petitioners* do not question this finding but *contend that their acts were but an additional step in a trade dispute, and that* when *claimants* left their work because of such acts, they *left because of a trade dispute* and are therefore not eligible for benefits. *This reasoning fails to distinguish between leaving in the course of a trade dispute and leaving because of a trade dispute. The act* does not disqualify an employee from receiving benefits in all cases where his unemployment results directly or indirectly from a labor dispute, but *makes him ineligible only if he left his work because of the dispute.* There must therefore be a direct causal connection between the trade dispute and the leaving of work. It is conceded that when claimants ceased working, a trade dispute between the unions and employers was in active progress, but this fact alone does not necessarily establish that the leaving was because of the trade dispute. The commission found that the *leaving was caused by the reduction in wages and the changed conditions of work,* which the employers declared would continue in effect until the unions agreed to negotiate with them."

"* * * *When the new conditions of work were finally announced by the employers, they were not offered as bona fide proposals* for the continued operation of the employers' places of business, but were imposed for the sole purpose of coercing the unions into bargaining collectively with the employers' representative and were to continue only until the unions agreed to do so. *Admittedly they were an economic weapon designed to compel compliance with the employers' demands,* and when claimants left their work, they left because of this economic weapon and not because of the trade dispute then in existence. *The fact that the trade dispute was unquestionably the motivating cause of the employers' acts does not establish any direct causal relation between the dispute and the employees' leaving of work,"* (p. 740)

"* * * *The economic weapon in the present case was created by the employers and directed against their employees, and it alone,* rather than the trade dispute that occasioned it, *was the cause of the leaving of work."* (p. 742)

McKinley v. California Emp. etc. Com., 34 A. C. 299, at the pages indicated (italics ours):

"Provisions disqualifying from benefits an employee whose unemployment is the result of a labor dispute are to be found in the unemployment compensation statutes of all of the 48 states. In most jurisdictions, however, the Legislature has made certain exceptions to the general disqualification provision. (49 Columb. L. Rev. 550 [1949].) Lack of such express statutory exception in the California act led this court in *Bodinson Mfg. Corp. v. California Emp. Com.,* * * * to state that *disqualification 'depends upon the fact of voluntary action' by the claimant.* That decision recognized the obvious legisla-

tive intent that persons who are involuntarily and innocently out of work as the result of a labor dispute should not suffer by loss of unemployment benefits. *Accordingly, the right to benefits under section 56 of the statute was said to depend upon whether the worker left his job of his own free will or was forced to do so because of the acts of others.*" (p. 302).

"'* * * If the other employers thereupon choose to close their establishments and lock out their employees, such employees cannot be charged with leaving their work because of a trade dispute.' (24 Cal. 2d 741)" (*The Bunny's Waffle Shop* case.) p. 305)

The concurring opinion by Mr. Justice Schauer states at page 305:

"* * * I am satisfied that unless Bunny's case is to be squarely overruled no result other than that reached by Justice Edmonds can fairly and consistently be reached.

"In Bunny's case there was no literal shutdown or lockout. A trade dispute had arisen; the employers, who theretofore had not, as among themselves, bargained collectively with the union (see p. 736 of 24 Cal. 2d), demanded collective bargaining with their newly formed association (as stated at p. 737, they 'wished to negotiate a single contract') and, as an alternative, announced that upon continued refusal to negotiate with their association wages would be reduced and certain working conditions changed. The employes refused to accede to either alternative and walked out. But their walkout was held not to be voluntary and *the concerted act of the employers was held* (see p. 739 of 24 Cal. 2d) *to be 'tantamount to a lockout.'*"

The disenting opinion of Mr. Chief Justice Gibson states, at page 312:

"It is conceded that the right to benefits depends upon whether the worker left his job of his own free will or was *forced* to do so because of the acts of others and that under the Bodinson case section 56 disqualifies only those workers who *voluntarily* leave their work (Citing *Bodinson* case.) Thus, although the section clearly precludes the payment of benefits to employees who go out on strike (citing cases), *it has been treated as not generally disqualifying workers who are locked out by their employers.* (Citing *Bunny's Waffle Shop* and *Bodinson* cases.) *It would be a contradiction in terms to hold that a locked-out employee had voluntarily left his work.*"

Allen Bradley Co. v. Local Union No. 3 (supra), at page 798:

"The question presented is whether it is a violation of the Sherman Antitrust Act for labor unions and their members, prompted by a desire to get and hold jobs for themselves at good wages and under high working standards to combine with employers and with manufacturers of goods to restrain competition in, and to monopolize the marketing of, such goods."

And at 800:

"Agencies were set up composed of representatives of all three groups to boycott recalcitrant local contractors and manufacturers and to bar from the area equipment manufactured outside its boundaries."

"* * * All of this took place, as the Circuit Court of Appeals declared, 'through the stifling of competition,' and because the three groups, in combination as 'co-partners,' achieved 'a complete monopoly which they used

to boycott the equipment manufactured by the plaintiffs.' Interstate sale of various types of electrical equipment has, by this powerful combination, been wholly suppressed."

"Quite obviously, this combination of business men has violated both Secs. (1) and (2) of the Sherman Act, unless its conduct is immunized by the participation of the union."

And at 807:

"For the union's contribution to the trade boycott was accomplished through threats that unless their employers bought their goods from local manufacturers the union laborers would terminate the 'relation of employment' with them and cease to perform 'work or labor' for them; and through their 'recommending, advising, or persuading others by peaceful and lawful means' not to 'patronize' sellers of the boycotted electrical equipment." (Italics ours.)

"* * * We pass to the question of whether unions can with impunity aid and abet business men who are violating the Act."

American Federation of Labor v. Watson, 327 U. S. 582, at 591, 90 L. Ed. 873, at 878:

"* * * We do not pass on the question whether the District Court had jurisdiction under Sec. 24(1) or Sec. 24(14) of the Judicial Code. For it is the view of a majority of the Court that jurisdiction is found in Sec. 24(8) of the Judicial Code, 28 U. S. C. A. Sec. 41(8), 7 F. C. A., Title 28, Sec. 41(8) which grants the federal district courts jurisdiction of all 'suits and proceedings arising under any law regulating commerce.' As we have said, the bill alleges a conflict between the

Florida law and the National Labor Relations Act. The theory of the bill is that labor unions, certified as collective bargaining representatives of employees under that Act, are granted as a matter of federal law the right to use the closed-shop agreement or, alternatively, that the right of collective bargaining granted by that Act includes the right to bargain collectively for a closed shop. Whether that claim is correct is a question which goes to the merits. It is, however, a substantial one. And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce.'"

Deitrick v. Greaney, 309 U. S. 190, at 196, 84 L. Ed. 694, at 699:

"It is a principle of the widest application that equity will not permit one to rely on his own wrongful act, as against those affected by it but who have not participated in it, to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available. * * *"

Hague v. C. I. O., 307 U. S. 496, at 512, 83 L. Ed. 1423 at 1435:

"The question now presented is whether freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the Act, and of the opportunities and advantages offered by it, is a privilege or immunity of a citizen of the United States secured against State abridgment by Sec. 1 of the Fourteenth Amendment; and whether Rev. Stat. Sec. 979 and Sec. 24(14) of the Judicial

Code, 28 U. S. C. A. Sec. 41(14) afford redress in a federal court for such abridgment. * * *

"Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgment, it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects.

"The National Labor Relations Act declares the policy of the United States to be to remove obstructions to commerce by encouraging collective bargaining, protecting full freedom of association and self-organization of workers, and, through their representatives, negotiating as to conditions of employment.

"Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages, and opportunities to accrue to citizens therefrom. All of the respondents' proscribed activities had this single end and aim. The District Court had jurisdiction under Sec. 24(14)."

Lincourt v. N. L. R. B. (1st Cir.), 170 F. 2d 306, 307:

"As the Act now reads, the General Counsel of the Board 'shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10.' Such administrative determinations by the General Counsel are not denominated 'orders' in the Act, and the Act makes no provision for their review."

Love v. Chandler et al. (8 Cir., 1942), 124 F. 2d 785:

"Action by Harold R. Love against Loye W. Chandler and others, each individually, for damages allegedly resulting from conspiracy of defendants to prevent plaintiff from having and holding employment under the Works Progress Administration. From a judgment of dismissal. the plaintiff appeals.

Affirmed."

And at 787:

"(3) The appellant does not seek redress because the State of Minnesota is discriminating against him, or because its laws fail to afford him equal protection. We have already held that he had no absolute right under the laws of the United States to have or retain employment by the Works Progress Administration. The appellant seeks damages because certain persons, as individuals, have allegedly conspired to injure him and have injured him by individual and concerted action. The wrongs allegely suffered by the appellant are assault and battery, false imprisonment, and interference with his efforts to obtain and retain employment with the Works Progress Administration. The protection of the rights allegedly infringed and redress for the alleged wrongs are, we think within the exclusive province of the State. Compare *Hodges v. United States*, 203 U. S. 1, 27 S. Ct. 6, 51 L. Ed. 65; *Carter v. Greenhow*, 114 U. S. 317, 330, 5 S. Ct. 928, 962, 29 L. Ed. 202, 207. We agree with the trial court that the appellant has failed to state a claim upon which relief could be granted under the statutes which he has invoked."

Mark Hopkins, Inc. v. *Cal. Emp. Com.*, 24 Cal. 2d 764, at 748:

"(1) Section 56(a) • • • provides that 'An individual is not eligible for benefits for unemployment, and no such benefit shall be payable to him . . . (a) If he *left his work* because of a *trade dispute* and for the period during which he continues out of work by reason of the fact that the *trade dispute* is still in active progress in the establishment in which he was employed.'

"A claimant is thus ineligible for benefits if the *trade dispute* is the direct cause of his continuing out of work.

"If a claimant who *leaves his work* because of a *trade dispute* subsequently obtains a permanent full-time job, however, he is no longer out of work and the continuity of his unemployment is broken. If he loses his new job for reasons unrelated to the dispute, he is unemployed by reason, not of the *trade dispute*, but of the loss of the new employment.

"(2) The termination of a claimant's disqualification by subsequent employment thus depends on whether it breaks the continuity of the claimant's unemployment and the *trade dispute*. Such employment must be bona fide and not a device to circumvent the statute." (Italics ours.)

And at 749:

"(4) Mere temporary or casual work does not sever this relationship, for it does not effectively replace the former employment. The worker expects its termination and does not look forward to that continuity of work and income that characterizes permanent employment.

"(5) Similarly, part-time employment of a claimant does not break the causal relation between the *trade dispute* and his unemployment." (Italics ours.)

Morgan v. United States, 304 U. S. 1, at 14; 82 L. Ed. 1129, at 1130, in an opinion by the late Mr. Chief Justice Hughes, deals with the Fifth Amendment in its relation to federal administrative action, but is applicable here. The opinion states, at 1130:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail can not be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a *quasi*-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing,'— essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard'." (Citing said *Ohio Bell Telephone*.)

National Labor Relations Board v. Phelps, 136 F. 2d 562, at 563:

"(1-4) The Board does not, indeed, it could not, contest the correctness of the principle respondents invoke, for a fair trial by an unbiased and non-partisan trier of the facts is of the essence of the adjudicatory process as well when the judging is done in an administrative proceeding by an administrative functionary as when it is done in a court by a judge. Indeed, if there is any dif-

ference, the rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to an administrative adjudication where many of the safeguards which have been thrown around court proceedings have, in the interest of expedition and a supposed administrative efficiency been relaxed. Nor will the fact that an examination of the record shows that there was evidence which would support the judgment, at all save a trial from the charge of unfairness, for *when the fault of bias and prejudice in a judge first rears its ugly head, its effect remains throughout the whole proceeding. Once partiality appears, and particularly when, though challenged, it is unrelieved against, it taints and vitiates all of the proceedings, and no judgment based upon them may stand.*

"It remains only to inquire whether the record sustains the charge of partiality and prejudice on the part of the trial examiner, a functionary having substantially the same relation to the Board that a special master has to a court of equity. Respondents say that it does, the board denies this. This is the charge. Appointed as examiner to conduct the hearing on a complaint following a charge against Phelps, as Trustee of Atlas Pipe Line Corporation, the examiner forsook his role as an impartial hearer and trier of facts, and taking on the double role of investigating accuser and espousing prosecutor, a role which the Board has not conferred, indeed, could not confer upon him as examiner, went into vigorous action as prosecution manager, and in that role did, or caused to be done, these things. *Upon the false pretense that he wished to complete the record made in the cause against Phelps, Trustee, he secured a stipulation for use in prosecuting Atlas Oil and Refining Corporation.* Immediately

upon its receipt, he directed that the stipulation be received and entered as an exhibit in the pending cause, and brought the matter to the attention of the Board and the chief trial examiner. *He caused the chief trial examiner to order the hearing reopened for the purpose of making Atlas Oil & Refining Corporation a respondent in the proceeding and to continue Denham as trial examiner.* Though no charge had been made against Atlas and the filing of a charge must precede a complaint, *Denham of his own motion issued an order to show cause* why Atlas should not be made a party, and the complaint amended so as to charge it with offenses under the act. *The proceedings having gone forward over* the objections of the trustee and Atlas, and their *motions to disqualify him, the examiner exhabited resentment and spleen toward them and gave expression to his pre-determined opinion of their guilt on the charges he was supposed to be trying."*

Ohio Bell Telephone Company v. Public Utilities Commission of Ohio, 301 U. S. 292, in an opinion by the late Mr. Justice Cardozo, at 304 (67 S. Ct. 724, 81 L. Ed. 1093, at 1101):

"Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. (Citing cases.) Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' (citing cases) of a fair and open hearing be maintained in

its integrity (citing cases). The right to such a hearing is one of 'the rudiments of fair play' (citing cases) assured to every litigant by the Fourteenth Amendment as a minimal requirement (citing cases). There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

Railroad Commission of California v. Pacific Gas & Electric Co., 302 U. S. 388, at 390, 82 L. Ed. 319, at 321, covers the jurisdiction of the three-judge court:

"This is an appeal from a final decree of the District Court, composed of three judges (28 U. S. C. A. Sec. 380), permanently enjoining an order of the Railroad Commission of the State of California."

And at page 391, and L. Ed. page 321:

"* * * Because of the federal question raised by the bill of complaint, the District Court had jurisdiction to determine all the questions in the case, local as well as federal. * * *"

Screws v. United States, 325 U. S. 91 (65 S. Ct. 1040; 89 L. Ed. 1495; 162 A. L. R. 1330), at 111:

"* * * We are not dealing here with a case where an officer not authorized to act nevertheless takes action. Here the state officers were authorized to make an arrest and to take such steps as were necessary to make the arrest effective. They acted without authority only in the sense that they used excessive force in making the arrest effective. It is clear that under "color" of law means under "pretense" of law Thus acts of officers in the ambit of their personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are in-

cluded whether they hew to the line of their authority or overstep it. If, as suggested, the statute was designed to embrace only action which the State in fact authorized, the words "under color of any law" were hardly apt words to express the idea."

United Steel Workers of America, et al. v. Shakespeare Co., et al., 84 Fed. Supp. Adv. 267:

"Action by United Steel Workers of America (U. S. A.-C. I. O.), *and others* (later identified as members) against the Shakespeare Company and others *for a judgment determining rights of parties under a collective bargaining agreement,* for a determination that defendants had wrongfully terminated the agreement *and for damages. On motion to dismiss the complaint. Motion denied."* (Italics ours.)

And at 269:

"The strained relations between these parties continued, and on November 16, 1948, *plaintiff union and representatives and members of the union* filed complaint against defendants in the present suit. *They allege,* among other things, *that the collective-bargaining agreement* of July 16, 1947, *had not been legally terminated* by defendants * * *." (Italics ours.)

And at 270:

"(1) It should be kept in mind that in their amended complaint *plaintiffs do not ask for injunctive relief* against so-called unfair labor practices or for any other form of injunctive relief. *They ask* only for a determination of their rights under the collective-bargaining agreement in question and *for a determination of their damages* claimed to have been *sustained as a result of defendants' alleged*

violation of the agreement. (Italics ours.) Plaintiffs' amended complaint and their claim of jurisdiction are based on Title III, Sec. 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. A. Sec. 185(a), * * *

"The defendants cite and rely upon the cases of Amazon Cotton Mill Co. v. Textile Workers Union, 4 Cir., 167 F. 2d 183, and *International Longshoremen's & Warehousemen's Union v. Sunset Line & Twine Co.,* D. C. 77 F. Supp. 119, as supporting their contention that this court is without jurisdiction of the present case. *However, in those cases the plaintiffs asked for injunctive relief,* and the courts correctly held that proceedings to enjoin *unfair labor practices were within the exclusive jurisdiction* of the National Labor Relations Board, and that a Federal district court did not have jurisdiction to enjoin unfair labor practices. *Furthermore, those cases did not involve alleged violation of collective-bargaining agreements and, therefore, were not within the purview of Section 301(a)* of the Labor Management Relations Act. The theory on which those cases were based, and the factual situations involved, clearly distinguish them from the present case." (Italics ours.)

And at 271:

"It is elementary that in considering a motion to dismiss the court must assume the truth of all material and well-pleaded allegations of fact. The amended complaint alleged numerous acts of violation of the collective-bargaining agreement by defendants prior to October 9, 1948, and, assuming the truth of those allegations, the court concludes that the amended complaint states a claim upon which relief could be granted."

And at 272:

"In summary, the court concludes:

"(1) That it has jurisdiction of the matters alleged in plaintiffs' amended complaint; and

"(2) That, assuming the truth of all material and well-pleaded allegations of fact, the amended complaint states a claim upon which relief could be granted.

"Defendants' motion to dismiss the amended complaint is accordingly denied."

United Electrical, R. & M. Workers v. Baldwin, 67 Fed. Supp. 235, at 239:

"(1-3) The Court has jurisdiction to entertain the action. The rights of free speech and assembly under the First Amendment are privileges of citizens of the United States, guaranteed against state infringement by the Fourteenth Amendment. The rights to due process of law and equal protection of the laws are guaranteed not only to citizens but to any person. Remedy for deprivation of these rights is provided by the Civil Rights Act, Title 8 U. S. C. A. Sec. 43, jurisdiction over the enforcement of which is given the District Courts by Section 24(14) of the Judicial Code, Title 28 U. S. C. A. Sec. 41(14). Snowden v. Hughes, 1944, 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497; Hague v. C. I. O., 3 Cir., 1939, 101 F. 2d 774, 790; Douglas v. City of Jeannette, 1943, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324; Burt v. City of New York, 2 Cir., 156 F. 2d 791.

"(4) The individual plantiffs as citizens of the United States are proper parties. The plaintiff unions, voluntary associations of individuals, are also proper parties to conduct the suit in a representative capacity in the interest of

their members. Rule 17(b), Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c; Hague v. C. I. O., *supra;* International News Service v. Associated Press, 1918, 248 U. S. 215, 39 S. Ct. 68, 63 L. Ed. 211, 2 A. L. R. 293.

"(5) A conspiracy to discourage collective bargaining is a deprivation of the rights secured by the Wagner Act, and therefore also a basis of suit under the Civil Rights Act and Section 24(14) of the Judicial Code referred to above. Suit to restrain such a conspiracy also falls within the jurisdiction of the Court under 24(8) of the Judicial Code, as a suit under a law regulating commerce, under the reasoning of American Federation of Labor v. Watson." (327 U. S. 582, 66 S. Ct. 761, 90 L. Ed. 873, at 878).

Wilson & Co., Inc. v. United Packing House Workers, 83 Fed. Supp. 162, at 163:

"Action by Wilson & Company, Inc., against United Packinghouse Workers of America, *a labor organization* affiliated with the Congress of Industrial Organizations, * * * *for damages for breach of collective bargaining contrast,* wherein the United States intervened. *On motion by defendant unions to dismiss for want of jurisdiction. Motion denied."* (Italics ours.)

And at 164:

"Plaintiff alleges that it is engaged in a business affecting commerce and that the defendants are labor organizations and voluntary unincorporated associations representing employees in an industry affecting commerce and have officers and agents engaged in such representation in this district. *The defendants are alleged to have breached the*

terms of the agreement by causing strikes and work stoppages in March of 1948 in certain of plaintiff's plants located in New York." (Italics ours.)

"Jurisdiction is invoked under Section 301(a) of the Labor Management Relations Act, 1947, * * * *and under 28 U. S. C. A. Sec. 1337,* which provides that 'the district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce * * *." (Italics ours.)

"(1) *First. It is contended by defendants that Section 301(a) is unconstitutional as applied to this case,* * * *.

"Defendants argue that the action is one for breach of contract, to enforce a right existing under the common law of the State of New York; that there is no diversity of citizenship, and the case is not one arising under the Constitution or laws of the United States or upon any other ground set forth in Article III, Section 2 of the Constitution. Consequently, runs the argument, Congress was without power to confer jurisdiction over the case on the District Court. (Citing cases.) *The argument must fail."* (Italics ours.)

And at 165:

"* * * Section 301 (a) of the Act, authorizing suits for violation of such agreements, would be meaningless on any other hypothesis and would attribute to Congress the anomalous action of providing for remedy and a forum in which to enforce it, without creating a right to remedy or to enforce. The very inclusion of Section 301 shows, on its face, and the legislative history of the Act confirms the Congressional intention, that other provisions of the Act, for redressing unfair labor practices,

were not an exclusive statement of the rights created by the Act, and did not eliminate or militate against the right to seek relief in the federal courts for violations of collective bargaining agreements between employers and labor organizations."

"* * * *The Labor Management Act creates important substantive rights* between employers and *employees* engaged in interstate commerce, and section 301 expressly authorizes suits of this character in district courts of the United States. It is clearly, therefore, a suit arising under a law of the United States." (Italics ours.)

And at 166:

"* * * In view of the fact that the enforcement of a federal right is involved in the instant case, the argument falls. It is clear that *Congress, having created a substantive right* in the exercise of its power under the commerce clause, art. 1, sec. 8, Cl. 3, *may also provide the procedure for enforcing that right by making voluntary labor organizations legal entities for the purpose of suit. United Mine Workers of America v. Coronado Coal Co.,* 259 U. S. 344, 383-392, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762; *cf.* Rule 17(b) of the Federal Rules of Civil Procedure. Insofar as state laws may conflict, they must yield to the paramount congressional legislation when a federal right is asserted as the basis of suit." (Italics ours.)

APPENDIX "C."

STATEMENT OF ALLEGATIONS IN COMPLAINT, SUPPLEMENTING STATEMENT IN PETITION.

THE FIRST COUNT also alleges jursdiction under the Labor Management Relations Act [R. 40]; that plaintiff Union, and its United Brotherhood of Carpenters & Joiners of America had filed all reports required by the Labor Act [R. 40]; that the employer defendants are engaged in interstate commerce, and in an industry affecting commerce as defined in the Labor Management Relations Act [R. 41]; that defendant IATSE is affiliated with the AFL [R. 41]; that plaintiq's members number upwards to 2,000 [R. 42]; and

That the Exhibit "A" jurisdictional agreement of July 9, 1921, between the Brotherhood of Carpenters and the IATSE [R. 42, 62], entitling plaintiff's members to "all carpenter work in and around Moving Picture Studios," etc. [R. 63], was accepted by the employer defendants, and never terminated [R. 42]; that the Exhibit "B-1" basic agreement of November 29, 1926, between the employer defendants and both the Brotherhood of Carpenters and IATSE, and its Exhibits "B-1" to "B-8," inclusive, successive agreements, including the Exhibit "B-6" closed shop agreement [R. 76], and the six-hour day agreements [R. 43], were all extended to October 13, 1946 [R. 43], and that none of them has been terminated [R. 42]; that the Exhibit "B-9" "Interim Agreement" of July 2, 1946, between plaintiff and the defendants, for employment of plaintiff's members for two years, and pending the signing of formal contracts, and fixing their wages, working conditions and six-hour day, was in effect an agreement to negotiate a formal contract [R. 43, 79-84]; and

That the defendant employers and IATSE had previously conspired in April, 1945, to replace the carpenters with the IATSE, by the organization and use of an IATSE Carpenters Local thereafter declared illegal by the AFL [R. 45]; that said conspiracy was renewed on or about August 22, 1946, when the defendant IATSE threatened the employer defendants to have IATSE members stop all work in the studios, exchanges and theatres, unless the employer defendants deprived plaintiff's members of certain of their work tasks under said collective contracts, said demands being made to coerce and require the employer defendants to so replace plaintiff's members with the IATSE [R. 46]; and

That the employer defendants yielded thereto and conspired with the defendant IATSE, to create a uniform incident in the studios on September 23, 1946, to falsely and fraudulently make it appear that plaintiff's members had refused to do work properly assigned to them, and to thereupon order and force all plaintiff's members to leave said studios, and replace them with the IATSE, under the pretense of an open shop, and to thereby impose more onerous conditions of employment on plaintiff's members [R. 47], as was done on or about said September 23, 1946 [R. 47]; and

That the employer defendants then uniformly forced plaintiff's members to discontinue their work tasks, and immediately leave the studios and premises, in a mass lockout that has been maintained ever since [R. 47], but that the employment of plaintiff's members has never been terminated [R. 48]; and

That while pretending that plaintiff's members were free to return to their work tasks the employer defendants actually established a closed shop in favor of the IATSE,

covering the work tasks belonging to plaintiff's members under said contracts, and have maintained a blacklist against planitiff's members ever since [R. 48]; and

That, in pursuance of said conspiracy, the employer defendants have refused to bargain with plaintiff's members [R. 48]; and

Have damaged them, and each of them, at the rate of $100 per week from September 23, 1946 [R. 49].

THE SECOND COUNT alleges jurisdiction under the Constitution of the United States, Article III, Section 2, Clause 1; the Fifth Amendment and the Fourteenth Amendment, Section 1 thereof; 28 U. S. Code 1331, 1337 and 1343; the Social Security Act; the National Labor Relations and Labor Management Relations Acts, and that the amount in controversy exceeds, exclusive of interest and costs, $3,000 for each of plaintiff's members [R. 49]; adopts the allegations of the First Count; and

That from the enactment of the Social Security Act, and California Unemployment Insurance Act, to the date of said September 23, 1946, lay-off, replacement and lock-out, the employer defendants deducted from the wages of each of plaintiff's members employed by them the withholding tax payable to the United States and State of California [R. 50]; and

That said employer and other defendants conspired to, and did, interfere with and impede the consideration of claims of plaintiff's members for unemployment compensation and disability benefits, and caused said State Agency and its officials to arbitrarily and capriciously abridge the privileges and immunities of each of plaintiff's members as citizens of the United States, and deprive each of them of his liberty and property without

due process of law, and deny each of them within the jurisdiction thereof the equal protection of the law in intentional and wilful, gross and wanton disregard of the Fifth and Fourteenth Amendments of the Constitution and laws of the United States [R. 51-52]; and

That on September 16, 1946, the employer defendants agreed to falsely and fraudulently represent to said State Agency that each of plaintiff's members employed, or eligible for employment, by them had left his work on account of a trade dispute, by an agreement between them, as follows:

"Unemployment Compensation—Origin of the Luth office wanted instructions for the Controller as to what position the Producers wanted to make on statement to be made to the State Unemployment Fund. It was agreed to say 'the employee left his work on account of a trade dispute' and to ask the Department to disqualify him for unemployment compensation."

That said employer defendants, in pursuit of said conspiracy, thereafter caused said State Agency to accept lists of plaintiff members furnished by said employer defendants, and to arbitrarily an dopprivously blacklist plaintiff's members, and deny their claims for both unemployment compensation and disability benefits, without allowing any of them a fair hearing on, or consideration of, their claims, and to refuse to receive claims from divers of plaintiff's members because of said blacklist, and state to them that there was no use for them to apply therefor because the said employer defendants had placed a stop order against their names in violation of Section 303 of the Federal Social Security Act (42 U. S. C. A. 503) requiring that they be given an "opportunity for a fair hearing, before an impartial tribunal" on their respective appeals etc. [R. 52-54]; and

That said employer defendants further caused said State Agency to deny claimants full, fair and open hearings, by excluding from evidence their collective contracts, and the minutes of the meetings of the employer defendants' labor committee showing the conspiracies specifically alleged in the complaint [R. 55-56]; and

That said employer defendants further caused said State Agency to arbitrarily and capriciously inject an unlawful and unjustified "purge" condition to the allowance of the claims of plaintiff's members to force them (a) to acquiesce in the false finding that they had left their work on account of a trade dispute, (b) to abandon their collective agreements, and surrender their rights thereunder, (c) to waive their rights of action, and (d) their rights of collective bargaining, (e) accept more onerous conditions of employment, and (f) subject themselves if and when re-employed, to the domination and control of the defendant IATSE [R. 57], and permit payments to the claimants, if made upon the "purge," to be charged to the general insurance trust fund "instead of to the accounts of said employer defendants under the provisions of Article 6 of said Unemployment Insurance Act [R. 58]; all in violation of the Civil Rights Act [R. 58-61].

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IN THE

Supreme Court of the United States

October Term, 1950.
No. 223

STUDIO CARPENTERS LOCAL UNION No. 946, an unincorporated labor organization, as representative of its members,

Petitioner,

vs.

LOEW'S, INCORPORATED, a corporation, *et al.*,

Respondents.

Brief of Respondents The International Alliance, etc., and Roy M. Brewer in Opposition to Petition for a Writ of Certiorari.

Additional Statement of the Case.

Respondents The International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada and Roy M. Brewer, on whose behalf this brief is filed, will be referred to as Labor Respondents; Respondents Loew's, Incorporated, Paramount Pictures, Inc., Warner Brothers Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Twentieth Century-Fox Film Corporation, R. K. O. Radio Pictures, Inc., Universal Pictures Company, Inc., and Association of Motion Picture Producers, Inc., will be referred to as Employer Respondents.

Petitioner, in its original Complaint, sought declaratory relief only [R. 18-19]. Motions interposed by both Labor Respondents and Employer Respondents to dismiss were granted, with leave given Petitioner to amend [R. 39]. Petitioner then filed its "amended complaint for damages" [R. 40], which is divided into two causes of action. The First Cause of Action avers that sundry acts constituting unfair labor practices were committed by the Employer Respondents in conspiracy with Labor Respondents in violation of certain contracts, as a consequence of which it is asserted in Paragraph XX [R. 48] *"plaintiff's members, and each of them,* have been damaged" "at the rate of One Hundred Dollars ($100.00) per week from September 23, 1946," and, in addition, "plaintiff demands exemplary and punitive damages against defendants in the sum of Ten Thousand Dollars ($10,000.00) *for each of its members"* [Par. XXI, R. 49] upon the ground that the Respondents acted maliciously, etc., in violation, etc., "of the Constitution and laws of the United States, and of the rights of plaintiff's members thereunder, and under their said collectively bargained agreements."* It is further alleged in Paragraph I of the First Cause of Action that "the action arises under the Labor-Management Relations Act, 1947." [R. 40.] (See Appendix "A" hereof.)

The Second Cause of Action sets forth Petitioner's assertions that by reason of acts of the Employer Respondents—part of the alleged conspiracy with Labor Respondents, as Petitioner asserts—Petitioner's members were prevented from obtaining compensation on claims filed by them under the California Unemployment Insurance Act. It is alleged in Paragraph I of the Second Cause of Action

*Italics throughout this brief, unless otherwise indicated, are ours.

[R. 49] that jurisdiction over said Second Cause of Action is vested in the District Court by the Fifth and Fourteenth Amendments to the Constitution, the Civil Rights Act, the Social Security Act, the National Labor Relations Act, and the Labor-Management Relations Act, 1947.

Individual members of Petitioner were plaintiffs in *Schatte, et al., v. The International Alliance, etc., et al.,* 70 Fed. Supp. 1008, affd. 165 F. 2d 216 (certiorari denied 68 S. Ct. 1018, 334 U. S. 812, 9 L. Ed. 1743). That case will be referred to as *First Schatte Case.* Some of the persons who were plaintiffs in the *First Schatte Case* are likewise plaintiffs in *Schatte, et al., v. The International Alliance, etc., et al.,* 84 Fed. Supp. 669, 182 F. 2d (Adv.) 158, which will be referred to as *Second Schatte Case,* and concurrently with the filing of a petition for a writ of certiorari in the instant case a like petition was filed in the *Second Schatte Case.* The same contracts and, in the main, the same conspiracy set forth in the *First Schatte Case* and the *Second Schatte Case* form the basis of Petitioner's asserted claim in the instant action.

Summary of Labor Respondents' Argument.

It is the contention of Labor Respondents that the District Court did not have jurisdiction over the subject matter of the First Cause of Action, and that same does not state a claim upon which relief can be granted, upon the following grounds:

(a) That a labor organization, such as Petitioner, is not a proper party plaintiff in an action in any court, and particularly in the District Courts of the United States, in which the relief sought consists of alleged weekly damages to *its members,* obviously loss of wages on the part of "such members";

(b) That Section 301, LMRA, 1947, did not enlarge class of actions of which District Courts of the United States were given jurisdiction, but merely permitted a labor organization to sue or be sued as an entity for violation of collectively bargained contracts;

(c) That the discharge by an employer of members of a labor organization with which such employer has a closed-shop contract, resulting in damage to the individual members of the labor organization because of loss of wages, does not vest any right in such labor organization to institute an action and recover a judgment for such damages so sustained by its individual members, and said Section 301 does not vest jurisdiction in the District Courts of such an action;

(d) That a closed-shop contract does not create hiring contracts with individual members of a labor organization having such closed-shop contract, and if a hiring contract with an individual member has been violated a cause of action for such violation arises in favor of the individual member and not the labor organization;

(e) That the matters and things of which Petitioner complains in the First Cause of Action, if true, constitute unfair labor practices under both the National Labor Relations Act (Wagner Act) and the Labor-Management Relations Act, 1947 (Taft-Hartley Act); being such, District Courts of the United States do not have jurisdiction to grant relief by way of recompense to individual members of a labor organization of lost wages or otherwise, since such recompense is a matter exclusively for the National Labor Relations Board;

(f) That Labor Respondents are not a party to any contract to which Petitioner is a party, referred to in the

Amended Complaint or attached thereto as an exhibit. The only contract to which Petitioner is a party is the so-called "Beverly Hills 'Interim Agreement'" [Exhibit B-9]; Labor Respondents are not a party to this contract. Petitioner is not a party to the other contracts referred to in the Amended Complaint, to which it is alleged Labor Respondent International Alliance, etc., is a party;

(g) There is no Federal statute relating to the subject matter of the First Cause of Action which authorizes the awarding of exemplary or punitive damages; under the California state statute (Section 3294, Civil Code) exemplary damages are not allowed for the breach of contractual obligations;

(h) Section 301, LMRA, being prospective and not retrospective in character, has no application in the instant case since the alleged violations of contracts relied upon by Petitioner occurred many months prior to the effective date of said Section 301; and

(i) Since the acts and conduct on the part of the Respondents, of which Petitioner complains, all occurred long prior to enactment of Section 303, LMRA, 1947, Petitioner cannot state a claim upon which relief can be granted or which contains subject matter over which District Court could have jurisdiction under said section.

It is the further contention of Labor Respondents that the Second Cause of Action of the Amended Complaint does not state a claim upon which relief can be granted, and that the District Court did not have jurisdiction over the subject matter thereof for the reasons set forth in the opinion in *Schatte, et al., v. International Alliance, etc., et al.*, 70 Fed. Supp. 1008; affd. 165 F. 2d 216 (Writ of Certiorari 68 S. Ct. 1018, 334 U. S. 812, 92 L. Ed. 1743), sometimes referred to herein as *First Schatte Case*..

ARGUMENT.

I.

District Court Did Not Have Jurisdiction Over the Subject Matter of the First Cause of Action of Amended Complaint; Same Fails to State a Claim Upon Which Relief in Favor of Petitioner Can Be Granted.

(1) Since Labor Respondents Are Not Parties to Any Contract Described in Amended Complaint to Which Petitioner Is a Party, District Court Did Not Have Jurisdiction Under Section 301, LMRA, 1947.

Petitioner, in its Amended Complaint, refers to and sets forth as exhibits thereto sundry contracts, and it is upon such contracts that Petitioner bottoms its First Cause of Action. Labor Respondents *and* Petitioner are not parties to any one of such contracts. The *only* contract described in the Amended Complaint and attached thereto as an exhibit to which Petitioner is a *party* is the so-called "Beverly Hills 'Interim Agreement'" [Pars. IX and X of Amended Complaint, R. 43-44], which is attached to the Amended Complaint as Exhibit "B-9" [R. 79-84]. *Labor Respondents are not parties to this contract.* It is true that Labor Respondents are parties to the July 9, 1951, Agreement [Exhibit "A," R. 62-64], the "Basic Agreement" of November 29, 1946, and the successive renewals, extensions, and enlargements thereof [Exhibits "B-1," "B-2," "B-3," "B-4," "B-5," "B-6," "B-7," and "B-8," R. 65-78], referred to in Paragraphs VI and VII of the Amended Complaint [R. 42-43]. *However, Petitioner is not a party to any of said last mentioned contracts or agreements.* Hence, we have the situation presented

whereby Petitioner is suing Labor Respondents on a large number of contracts or agreements, Petitioner being a party to only one of such contracts, Labor Respondents not being a party to same, and Labor Respondents The International Alliance, etc., being a party to other contracts, to which other contracts Petitioner is not a party. Under such circumstances, the District Court did not have jurisdiction under Section 301, LMRA, 1947, and same is not applicable, because the legislative history indicates beyond dispute that the intention of Congress by Section 301 was to provide a forum for settlement of asserted violations of labor contracts by lawsuits, the parties to which could only be the parties to the contract involved, i.e., either the employer or the labor organization.

(5) Section 301, LMRA, 1947, Did Not Enlarge Class of Cases of Which District Courts Were Given Jurisdiction.

As Judge Parker well said, in speaking for the United States Court of Appeals for the Fourth Circuit, in *Amazon Cotton Mill Co. v. Textile Workers, etc.*, 167 F. 2d 183, at 187-188:

> "Contention is made that jurisdiction is vested in the District Court by section 301(b) of the act, 29 U. S. C. A., Section 185(b), providing that a labor organization may sue or be sued in the courts of the United States 'as an entity and in behalf of the employees whom it represents;' but the purpose and effect of this provision was manifestly to make clear the capacity of labor organizations to come or 'to be brought into court as parties' (*J. Truscott v. Brotherhood of Locomotive Firemen and Enginemen*, 8 Cir., 148 F. 2d 403), not to enlarge the class of cases of which the District Courts were given jurisdiction.

The difference between such a provision and one conferring jurisdiction is well illustrated by comparison of 301(b) of the act with *301(a), the latter of which confers on the District Courts jurisdiction of suits between employers and labor organizations for violation of contracts.* Another provision conferring jurisdiction on the District Courts is section 303(b) of the act, which authorizes them to entertain suits for damages on account of the strikes and boycotts made unlawful by section 303(a). There would, of course, have been no reason for the enactment of either section 301(a) or section 303(b), if the effect of section 301(b) was to vest in the federal courts general jurisdiction of suits by or against labor unions.

"There is nothing in the history of the act, the reports of committees or the debates in Congress which even vaguely supports the contention that its effect was to vest jurisdiction in the District Courts to grant relief against unfair labor practices. Every thing said by anyone remotely bearing on the matter is to the contrary."

The Congressional debates also make it clear that said Section 301 was not intended by Congress to create any new causes of action in favor of a labor organization. As said by Senator Murray in the debate in the Senate on April 23, 1947 (p. 4153, Congressional Debates on Suits by and Against Labor Organizations):

"This Section permits suits by and against a labor organization representing employees in such industry, in its common name, with money judgments enforceable only against the organization and its assets.

* * * * * * * *

"Every district court would still be required to look to State substantive law to determine the question of violation. *This section does not, therefore, create a new cause of action, but merely makes the existing remedy available to more persons by removing the requirements of amount in controversy and of diversity of citizenship where interstate commerce is affected.*"

(3) Petitioner, as a Labor Organization, Is Not Proper Party Plaintiff in an Action Under Either Sections 301 or 303, LMRA, 1947, Wherein Damages to Individual Members of Petitioner Are Sought.

Petitioner seeks under the First Cause of Action of the Amended Complaint to recover, "as representative of its members," "upwards of 2,000 in number," (a) damages for its members, "and each of them," "at the rate of One Hundred ($100.00) Dollars per week from September 23, 1946," because the alleged acts of the Respondents "have caused plaintiff's members to be deprived of their work tasks, and eligibility for the same"; and (b) "exemplary and punitive damages against defendants in the sum of Ten Thousand ($10,000.00) Dollars for each of its members" upon the ground that the Respondents acted maliciously, etc. The claim for punitive and exemplary damages may be disposed of briefly by pointing out that there is no Federal statute allowing punitive or exemplary damages in actions such as Petitioner attempts to assert in the First Cause of Action of the Amended Complaint, and so far as the California state law is concerned no exemplary damages may be awarded for breach of contract (Sec. 3294, California Civil Code). Petitioner apparently has adopted the theory that, because Section 301(b), LMRA, 1947, states that "any such labor organization

may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States," it, as a labor organization, can come into the United States District Courts and sue as the representative of its members upon any causes of action which such members, as individuals, might have against an employer in the State courts or in the Federal courts if diversity of citizenship and requisite amount in controversy existed. Obviously, the words "whom it represents" refer to such causes of action as a labor organization possesses as an entity, and does not mean that the separate individual causes of action which members of a labor organization have, or claim to have, may be prosecuted by the labor organization in its own name. The word "contracts" as used in Section 301(a), LMRA, 1947, obviously refers to collective bargaining contracts entered into between a labor organization and an employer. Neither before enactment of the Taft-Hartley Act, and particularly Section 301 thereof, nor by reason of the enactment of such Act, does a labor organization become a proper party plaintiff to seek to recover damages which have been sustained by its individual members, whether such damages be punitive and exemplary, or be for loss of wages, or arise in any other fashion out of the breach of any contract existing between the individual members of such labor organization and a partciular employer. As we shall hereinafter point out, a closed-shop contract does not by itself constitute nor create a hiring contract between individual members of the labor organization possessing such contract and the employer. It may be conceded *arguendo* that there are rights which accrue in favor of a labor organization as a result of a closed-shop contract, and, obviously, under Section 301(a), LMRA, 1947,

the labor organization, as a separate and distinct entity under Section 301(b), may sue in the District Courts to recover damages sustained by it, or perhaps, absent a labor dispute, as that term is defined by the Federal courts, sue for injunctive relief. It may well be that a labor organization, under Section 301(a), may sue in the District Courts to recover damages for violation of a closed-shop contract where such damages arise from a violation of such contract by the employer and such violations produce damages to the labor organization, such as loss of dues by the failure on the part of the employer to comply with the dues-deduction-from-salary clause of the contract. There are other illustrations which might be given relative to the causes of action which could be asserted by a labor organization, as an entity, suing an employer, under Section 301(a) and (b). *However, in the instant case, Petitioner does not seek to recover judgment for damages to itself, but specifically asks for damages which it is alleged its more than 2,000 members have sustained at the rate of one hundred dollars ($100.00) a week from September 23, 1946, and for ten thousand dollars ($10,000) exemplary damages for each of its members.*

In *Christiansen, et al. v. Local 680, etc.*, 126 N. J. Eq., 508, 10 A. 2d 168, a closed-shop contract existed between Local 680 and a certain employer named Tuscan. By way of a counterclaim, Local 680 alleged that Tuscan, in violation of the closed-shop contract, discharged four of said Local's members and sought a judgment requiring Tuscan to reinstate such discharged members with back pay. The New Jersey court in referring to a collective bargaining agreement stated the uniform law as follows:

> "A collective bargaining agreement is the joint and several contract of the members of the union, made

by the officers of the union as their agents. It is enforceable by or against individual members of the union in matters which affect them peculiarly; and it is enforceable by or against the union in matters which affect all the members alike, or large classes of members, for instance, those who are employees of the other party to the contract."

Then taking up the precise question of whether individual members of Local 680, which possessed the collective bargaining agreement with the employer Tuscan, could bring an action for damages to them arising out of their alleged unlawful discharge in violation of such agreement, the Court further stated:

> "The counterclaim shows that Tuscan without just cause, discharged four named members of the Union from its employ in violation of the contract and the counterclaim prays that Tuscan be required to reinstate them with back pay. None of them is a party to the counterclaim. *While their unjustifiable discharge may give them a cause of action on the contract, it is a cause solely between them and Tuscan and not between the members of the Union collectively and Tuscan. No relief in this respect can be had on the counterclaim.*"

The case of *Milk Wagon Drivers' Union of Chicago, Local 753, et al. v. Associated Milk Dealers, Inc., et al.*, was before Judge Holly of the District Court for the Northern District of Illinois, Eastern Division, on two separate occasions, and the opinions of Judge Holly are reported in 39 Fed. Supp. 671 and 42 Fed. Supp. 584, respectively.

From the opinion reported in 39 Fed. Supp. 671 at 672, it appears that the plaintiffs in the action were the Milk Wagon Drivers' Union of Chicago, Local 753, and various officers and trustees of that labor organization, and the defendants were some 25 milk dealers operating in the city of Chicago. The action was brought to recover certain back wages claimed to be due to the drivers of their wagons, members of the plaintiff union, under the terms of a certain arbitration agreement. A motion to dismiss was interposed. We quote from Judge Holly's opinion as follows:

> "The motion of defendants to dismiss must be sustained.
>
> "This is not a proper class action. Each milk wagon driver has his individual claim which he is entitled himself to prosecute. It would be a strange situation indeed if some one else, either labor union or labor union officer, were permitted to institute an action embodying the claims of perhaps thousands of individuals and they, without ever knowing such an action was instituted, were to be bound by the result of that suit. * * *
>
> "Counsel for plaintiffs say this is not brought as a class action, but on no other theory may a suit for the benefit of many others, to which they are not made parties, be maintained."

After the original complaint had been dismissed for the reasons above set forth, an amended complaint was filed in which the plaintiffs were the same union and James G Kennedy, its vice president. It was alleged in the amended complaint that the suit was brought on behalf of 3500

drivers, members of the plaintiff labor organization, and as Judge Holly pointed out in his opinion in 42 Fed. Supp. at page 584:

> "The question presented by the motion to dismiss is whether the union may maintain this action to recover for the benefit of the *individual members* of the union the amount, if any, due each under the terms of the award of the arbitrators."

We quote from Judge Holly's answer to his own query as follows:

> "I am of the opinion that the union cannot maintain this action. It is the theory of the plaintiff that agreement between the union and the employers constitutes a contract between them for the benefit of the members and that the union, as promisee in the contract, may maintain the action for the benefit of the members."
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> * * * * * * * *
>
> ". . . The union did not enter into an agreement to furnish employees who would accept the award and work for the wages set by the arbitrators. The most that was accomplished was that the union induced the employer to agree that he would pay the stipulated wages to such members of the union as cared to accept employment on those terms. There was no contract with an employee until he accepted the terms offered by the employer by entering into employment. Then there was a contract between the employer and the employee, a contract which the employee, not the union, may enforce."
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> * * * * * * * *
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> "It is further urged by plaintiff that this action may be maintained as a class action. I held against this contention on the motion to dismiss the original

complaint. Since that time the Supreme Court of Illinois in Peoples Store of Roseland *et al v.* McKibben, 39 N. E. 2d 995, which in my opinion is an analogous case, has ruled against the contention of plaintiffs.

"The complaint does not state a case entitling plaintiffs to the relief prayed."

In *Joint Council Dining Car Employees Local 370, et al. v. New York Cent. R. Co.,* reported in 7 Fed. Dec. 376, the plaintiff labor organization instituted an action "for and on behalf of Chester Budd and other employees similarly situated" against the New York Central Railroad Company to enforce an award granted by the National Railroad Adjustment Board. Budd and "other employees similarly situated" were members of plaintiff union. The court said at page 377 of 7 Federal Rules Decisions:

"The ultimate question presented is whether the union may maintain this action to recover for the benefit of the individual members of the union the money due each under the award of the National Railway Adjustment Board."

After so stating the question involved, the court discussed and quoted at some length from the decision in the *Milk Wagon Drivers* case reported in 42 Fed. Supp. 584, and concluded by saying:

"In the instant suit the action was brought by the Local on behalf of a named member-employee and others similarly situated. The interest of Joint Council Dining Car Employees Local 370 in this case is no greater than that in the Milk Wagon Drivers Union case, *supra.* Before any right to recover money accrued to a member of the union it is neces-

sary that the employee enter upon a contract of employment in accordance with the terms of the agreement between the Local and the employer. The right to recover money results from the contract of employment between the employer and employee and only the employee can sue to recover money due him. The union has its right in the enforcement of its bargainining agreement, but has no interest as an organization in the money due the members of the union.

"The motion to dismiss is sustained."

Mr. Justice Hecht of the New York Supreme Court, in *Kaufman v. M. T. Davidson Co.* (22 LRRM 2531), succinctly stated the rule as follows:

"The second cause of action is, however, insufficient since plaintiff union may not sue for the balance claimed to be due for work and services claimed to have been rendered by plaintiff's members as employees of defendant corporation. *Such a suit may be maintained only by the employees themselves.*"

(4) A Closed-Shop Contract Does Not Constitute nor Create a Hiring Contract.

The law is well settled that a closed-shop contract does not constitute nor create hiring contracts between individual members of the labor organization, party to such contract, and the employer, likewise a party thereto. As was stated by the Supreme Court of the United States in *J. I. Case Co. v. National Lab. Rel. Bd.*, 321 U. S. 332 at 334, *et seq.*, 88 L. Ed. 762 at 766:

"Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will

govern hiring and work and pay in that unit. *The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone.* The negotiations between union and management result in what often has been called a trade agreement, rather than in a contract of employment. Without pushing the analogy too far, the agreement may be likened to the tariffs established by a carrier, to standard provisions prescribed by supervising authorities for insurance policies, or to utility schedules of rates and rules for service, which do not of themselves establish any relationships but which do govern the terms of the shipper or insurer or customer relationship whenever and with whomever it may be established. * * *"

"After the collective trade agreement is made, the individuals who shall benefit by it are identified *by individual hirings.* The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge. But the terms of the employment already have been traded out. There is little left to individual agreement except the act of hiring. This hiring may be by writing or by word of mouth or may be implied from conduct. In the sense of contracts of hiring, individual contracts between the employer and employee are not forbidden, but indeed are necessitated by the collective bargaining procedure."

An excellent discussion of this rule is found in *Swart v. Huston* (Kansas Supreme Court, 1941), 117 P. 2d 576. The rule was recognized and applied in the *Christiansen* case, *supra,* from which we have hereinbefore quoted.

(5) Since Section 301, LMRA, 1947, Is Prospective and Not Retrospective in Character and Since Contractual Violations Asserted by Petitioner Occurred Prior to Enactment of LMRA, 1947, District Court Lacked Jurisdiction and No Claim Was Stated Under Said Section 301 Upon Which Relief Could Be Granted.

Petitioner alleged that certain contracts were violated by Employer Respondents as part of a conspiracy with Labor Respondents. However, such alleged violations occurred long prior to the enactment of LMRA, 1947, and particularly Section 301 thereof. The "initial act towards the accomplishment of the conspiracy," of which Petitioner complains, occurred in April, 1945 [R. 10]. It is further alleged "that in continuation of their conspiracy, the defendants in August and September, 1946, formulated and agreed upon a uniform plan of procedure whereby the employer defendants would deprive all of plaintiff's members of their work tasks, and of their aforesaid contractual rights, etc." [R. 10-11.] Petitioner further alleges "that on or about September 23, 1946, said plan was put into effect by the defendants, etc." [R. 11], and "that having so locked out all of plaintiff's members, said employer defendants thereupon replaced them with members and permittees of the defendant IATSE and assigned said replacements to the work tasks of plaintiff's members, etc." [R. 12-13.]

The last overt act in the alleged conspiracy, therefore, occurred on September 23, 1946, which was exactly *nine months prior to Section 301, LMRA, 1947, being enacted.* Section 301 permits labor organizations or employers to sue or be sued in District Courts of the United States

"for violation of contracts." We submit that under all principles of law, both constitutional and otherwise, suits permitted under said Section could only be for violations occurring after the Act was enacted—in other words, that Section 301 is prospective and not retrospective in character. In this view, we are supported by the statement appearing in *Colonial Hardwood Floor Co. v. International Union*, 76 Fed. Supp. 493 at 496, reading as follows:

> "The constitutionality of section 301 is also challenged on the ground that it violates the due process clause of the Fifth Amendment in its alleged retrospective operation on contracts existing prior to the passage of the Act. But in my opinion *the Act is prospective* and not retrospective in character. It is not made retrospective merely because it gives additional remedies for the *future* breach of then existing contracts."

In this connection, see *Wilson & Co. v. United Packing House Workers*, 83 Fed. Supp. 162, in which the *Colonial Hardwood Floor Company* case is quoted from with approval.

(6) Section 303, LMRA, 1947, Not Having Been Enacted Until Long After the Acts and Conduct of the Respondents of Which Petitioner Complains Occurred, Has No Application; District Court Had No Jurisdiction of Instant Action Under Said Section and Petitioner Cannot State a Claim Under Same Upon Which Relief Can Be Granted.

There is a compelling and conclusive reason why the District Court did not have jurisdiction under Section 303, LMRA, over any of the causes of action set forth in the Second Amended and Supplemental Complaint and why

none of said causes of action stated a claim upon which relief could be granted, namely, the fact that all of the acts of the Respondents of which Petitioner complains occurred prior to the enactment of LMRA, 1947, and particularly Section 303 thereof. LMRA, 1947 (Taft-Hartley Act), was enacted into law on June 23, 1947, and on that date the provisions of Section 303 became effective. Prior to June 23, 1947, there was no Federal statute which made unlawful acts and conduct on the part of a labor organization prohibited by said Section 303, and prior to that date there existed no Federal law permitting actions for damages on the part of persons injured in their business or property as a result of certain conduct by labor organizations, which for the first time was, by the Taft-Hartley Act, made unlawful. It was lawful, so far as the Federal statutes are concerned, for a labor organization, prior to the enactment of LMRA, on June 23, 1947, in an industry or activity affecting commerce, to engage in, or induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, even where an object thereof was to force or require an employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, rather than to employees in another labor organization or in another trade, craft, or class. In other words, everything which is made unlawful by Section 303 was lawful, prior to June 23, 1947, so far as the Federal statutes, at least, are concerned.

The "initial act towards the accomplishment of the conspiracy," of which Petitioner complains, occurred in

April, 1946 [R. 10]. It is further alleged "that in accordance of their conspiracy, the defendants in August and September, 1946, formulated and agreed upon a uniform plan of procedure whereby the employer defendants would deprive all of plaintiff's members of their work tasks, and of their aforesaid contractual rights, etc." [R. 10-11.] Plaintiff further alleges "that on or about September 23, 1946, said plan was put into effect by the defendants, etc." [R. 11], and "that having so locked out all of plaintiff's members, said employer defendants thereupon replaced them with members and persons of the defendant UNION and assigned said replacements to the work tasks of plaintiff's members, etc." [R. 11-12.]

The last overt act in the alleged conspiracy, therefore, occurred on September 23, 1946, which was exactly one month prior to Section 301, LMRA, 1947, being enacted. How then could the District Court have jurisdiction under Section 303, and how is it possible for Petitioner to state a claim under said Section upon which relief can be granted?

Neither Section 301 nor Section 303 could vest jurisdiction in the District Court unless either or both were given a retroactive effect. There is nothing in the language of either section to indicate that Congress intended retroactivity. It is well settled, however, that unless a statute is by its terms, specifically given retroactive effect, its effect will be prospective only. (United v. Hark, 48 L. Ed. 747, 258 U. S. 339, 42 S. Ct. 335.)